

"The Court seriously doubts that 'trimmed' lettuce is a 'processed' food. More significant, however, is the first condition of the exemption proviso¹⁴ which contemplates that the raw agricultural commodity from which the processed food is made must itself conform to the pesticide chemicals tolerance. Overriding all else, of course, is the fact that the proviso exempts only the processed food and not the raw agricultural commodity.

"It is an elementary rule 'that exceptions from a general policy which a law embodies should be strictly construed, that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the enactment.' *Spokane & Inland Empire Railroad Co. v. United States*, 1916, 241 U.S. 344, 350; *McCauley v. Makah Indian Tribe*, 9 Cir., 1942, 128 F. 2d 867, 869-870. 'One claiming the benefit of an exemption from a statute of general application has the burden of bringing himself clearly within it.' *Walling v. Reid*, 8 Cir., 1943, 139 F. 2d 323, 327.

"The Court concludes as a matter of law that the defendant clearly does not come within the exemption proviso. In many cases, the courts have observed that the food and drug laws should be liberally construed more effectively to protect the public from adulterated and misbranded products. See *United States v. El-O-Pathic Pharmacy*, 9 Cir., 1951, 192 F. 2d 62, 75. Perhaps the best short answer to the 'exemption proviso' defense appears in *United States v. Dotterweich*, 1943, 320 U.S. 277. There too the defendant sought refuge under a strained interpretation of another exemption provision in the Federal Food, Drug, and Cosmetic Act. Rejecting the defense argument, the Supreme Court said at page 284.

It . . . reads an exception to an important provision safeguarding the public welfare with a liberality which more appropriately belongs to enforcement of the central purpose of the Act.

"4. Assessment of Costs

"After the jury returned a verdict of guilty, it became the duty of the Court to impose a penalty. Since the defendant is a corporation, the Court could impose a maximum fine of \$1,000 [21 U.S.C. 333(a)]. Under all the circumstances and after a presentence investigation, it was the judgment of the Court that defendant pay a fine of \$500.

"In addition the Court ordered that defendant pay the costs of prosecution insofar as they are taxable. By stipulation of counsel, those costs amount to \$2,000. Unquestionably, the total costs of investigation, analyses of samples, and trial preparation greatly exceed that sum.

"The Court's authority is clear. 28 U.S.C. 1918(b) reads: 'Whenever any conviction for any offense not capital is obtained in a district court, the court may order that the defendant pay the costs of prosecution.' It is settled that the taxing of costs in a criminal case is discretionary with the district court. *United States v. Lee*, 7 Cir., 1939, 107 F. 2d 522, 527-528, cert. den. 309 U.S. 659; *Alberty v. United States*, 9 Cir., 1937, 91 F. 2d 461, 464.

"Defendant was therefore ordered to pay the costs of prosecution."

28362. Romaine lettuce. (F.D.C. Nos. 47761, 47762. S. Nos. 52-274/5 T.)

QUANTITY: 63 crates, each containing approximately 36 heads, at Seattle, Wash.

SHIPPED: 6-11-62, from Oceano, Calif., by Pismo-Oceano Vegetable Exchange.

LABEL IN PART: (Crate) "Oceano Brand California Vegetables Packed and Shipped by Pismo-Oceano Vegetable Exchange, Oceano, California * * * 3 Doz. Romaine 27."

LIBELED: 6-19-62, W. Dist. Wash.

CHARGE: 402(a)(2)(B)—the article was a raw agricultural commodity and, when shipped, contained a pesticide chemical, namely, DDT, which was unsafe within the meaning of 408(a), since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulations.

DISPOSITION: 7-10-62. Default—destruction.

¹⁴ See footnote 8, *supra*.